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RECENT DECISIONS

CARRIERS—INJURY TO ONE RIDING ON FREIGHT TRAIN BY EMPLOYEE'S INVITATION NOT ACTIONABLE UNLESS WILFULL OR WANTON.—Decedent, an independent contractor employed to furnish cross-ties to defendant, was permitted by implied license, to ride upon the latter's passenger trains free of charge. Upon the invitation of the conductor in charge, decedent was riding on defendant's freight train. There was no caboose attached and he was riding with the train crew on top of a box car, which was derailed, due to defective track, decedent being killed as a result. Plaintiff, his widow, brought an action against the defendant company for damages, alleging that decedent was a licensee, whereupon defendant averred that he was a trespasser and that the conductor had no authority to invite him to ride. *Held*, no recovery. *Ocilla Southern R. Co. v. Faircloth* (Ga.), 110 S. E. 46 (1921).

For a general discussion of the principles involved in this case see 2 VA. LAW REVIEW 300; 3 VA. LAW REVIEW 464.

CONTRACTS—IMPOSSIBILITY OF PERFORMANCE—GOODS REQUISITIONED BY THE GOVERNMENT—SELLER EXCUSED FROM PERFORMANCE.—Defendant contracted to manufacture, sell and deliver to plaintiff certain woollens by a set date. When partial delivery had been made according to the agreement, the late war being in progress, army officials, acting under the National Defense Act, demanded that the defendant accept such an amount of government contracts and give them precedence, that defendant was unable to perform its contract as agreed upon with plaintiff. Plaintiff brought this action against the defendant for damages for failure to comply with its contract. *Held*, no recovery. *Mawhinncy v. Millbrook Woolen Mills* (N. Y.), 132 N. E. 93 (1921).

Cases of this character have arisen mostly following the late war, and present on the one hand rights of the seller to rescind, and on the other, rights of the buyer to rescind.

Upon facts nearly identical with the instant case the same holding is found. *Roxford Knitting Co. v. Moore & Tierney*, 265 Fed. 177, 11 A. L. R. 1415 (1920); *In re Shipton*, L. R. 3 K. B. 676 (1915); see also *Underwood v. Hines* (Mo.), 222 S. W. 1037 (1920).

But where the seller had reasonable time to perform before government interference rendered further performance impossible, the seller was held liable. *Crown Embroidery Works v. Gordon*, 180 N. Y. S. 158, 190 App. Div. 472 (1920). Where the seller is thus delayed or can only make partial performance because of these war measures, it often arises that it is the buyer and not the seller who wishes to escape liability. In a case where only partial shipment could be made under these circumstances, the buyer refused to accept, and the court upheld him. *Prescott v. Powles* (Wash.), 193 Pac. 680 (1920). While both parties under these conditions are innocent, yet governmental control cannot alter the terms of the contract so as to make non-performance amount to performance. *Brooke Toole Co. v. Hydraulic Co.*, 89 L. J. K. B. N. S. 263, 9 A. L. R. 1507 (1919).

And where there is no exception for the obstruction or delay of delivery in the contract, a contract, by which goods are to be delivered